

REMARKS

Claims 71-87 and 103-105 are now pending in the above-referenced patent application. Applicants respectfully request further consideration of these claims, in view of the amendments set forth above and the following remarks.

Examiner Interview

Applicants thank the Examiner for the courtesy of a telephonic interview on July 16, 2007, during which the then-pending claims and the prior art were discussed. No agreement was reached as to the outstanding rejections. Agreement was reached that a claim amendment to claim 71 stating that the pores had the general shape of a sphere would distinguish over the Alt reference.

Applicants made that amendment in a Response After Final filed July 18, 2007, but the Examiner issued an Advisory action stating that the Amendment would not be entered as the amendment would require further searching.

Amended Claims

Claim 71 has been amended to specify that the ingrowth matrix is adapted to promote ingrowth of tissue and to provide antecedent basis to the term "material".

Support for this amendment can be found throughout the specification, for example, at page 6, line 6.

No new matter has been added.

While Applicants disagree with the assertions of the Final Office Action that the Alt reference anticipates previous claim 71, Applicants have amended independent claim 71 to further prosecution. Applicants' amendment of this claim should not, in any way, be considered as an admission with respect to any outstanding rejections applying to this claim, and Applicants hereby expressly deny any such interpretation. Likewise, Applicants' amendment of this claim should not, in any way, be considered as a surrender of any subject matter covered by the amended claim or any equivalents thereof, and Applicants hereby express their intent to pursue patent coverage for such subject matter and equivalents thereof.

New Claims

New claims 103-105 have been added to claim certain preferred embodiments of the invention. Support for these claims can be found throughout the specification, including for example at page 9, lines 14-21 and Figure 4.

No new matter has been added.

Rejection Under 35 U.S.C. § 102(e)

The Examiner rejected claims 71-72, 74, 76, 78-79, and 82-84 under 35 U.S.C. 102(e) as being anticipated by Alt (U.S. Patent Application Publication No. 2004/0039438 A1).

Applicants respectfully traverse the rejection.

Independent claim 71 describes a prosthetic material including a scaffold having interconnecting, uniformly shaped pores, and an ingrowth matrix within the pores, wherein the ingrowth matrix comprises a concentration gradient of a material and is adapted to promote ingrowth of tissue in the scaffold. Applicants respectfully submit that Alt lacks, among other things, a teaching or suggestion of the ingrowth matrix as claimed.

Applicants respectfully submit that Alt fails to teach or suggest an ingrowth matrix having a concentration gradient of a material and that is adapted to promote ingrowth of tissue in the scaffold. Alt teaches a stent having a porous layer that is composed of metal particles that are bonded together. The bonded particles create a repository for retaining and ultimately dispensing drugs or other agents in a biodegradable carrier for time release from the stent after it is implanted. The device of Alt can be used for gene transfer by releasing a gene transfer agent, such as a viral vector, to inhibit proliferation of smooth muscle cells, such as to prevent restenosis. *See* Alt. paragraph [0015]. Applicants respectfully submit that the material in the interstices of the stent of Alt is not a matrix having a concentration gradient of a material, and more specifically, not an ingrowth matrix adapted to promote ingrowth of tissue in the scaffold as claimed in independent claim 71.

Claims 72, 74, 76, 78-79, and 82-83 depend on and incorporate all of the limitations of independent claim 1.

For at least the reasons discussed herein above, Applicants respectfully submit that claims 71-72, 74, 76, 78-79, and 82-83 are neither taught nor suggested by Alt.

Reconsideration and withdrawal of the rejections under 35 U.S.C. 102 are respectfully requested.

Rejections Under 35 U.S.C. § 103(a) (Alt)

The Examiner rejected claims 73, 75, 77, 80, 81, and 85-87 under 35 U.S.C. 103(a) as being unpatentable over Alt (U.S. Patent Application Publication No. 2004/0039438 A1).

Applicants respectfully traverse the rejection.

Claims 73, 75, 77, 80, 81, and 85-87 depend directly or ultimately from independent claim 71. Applicants respectfully submit that claims 73, 75, 77, 80, 81, and 85-87 are patentable over Alt for at least the reasons discussed herein above for the patentability of claim 71, in addition to reasons related to the additional subject matter recited in each.

Reconsideration and withdrawal of the rejections under 35 U.S.C. 103(a) are respectfully requested.

Equivalents

The amendments to the claims and the arguments presented in supplemental response to the Final Office Action have been made to claim subject matter which the Applicants regard as their invention. By such amendments, the Applicants in no way intend to surrender any range of equivalents beyond that which is needed to patentably distinguish the claimed invention as a whole over the prior art. Applicants expressly reserve patent coverage to all such equivalents that may fall in the range between applicants literal claim recitations and those combinations that would have been obvious in view of the prior art. In particular, as noted above, many of the claims have (not) been narrowed within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 USPQ2d 1705 (2002), and Applicants are therefore entitled to the full range of equivalents with respect to each of the presently-pending claims.

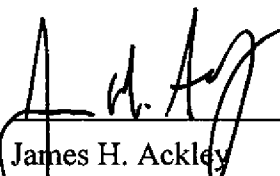
CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

The Examiner is hereby authorized to charge the fees required in connection with this Amendment to Deposit Account No. 13-2546, in accordance with the Transmittal submitted herewith. The Examiner is also authorized to debit any other fees required in connection with this application, or to credit any overpayment of fees in connection with this application to Deposit Account No. 13-2546.

Respectfully submitted,

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